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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,552	04/22/2004	Allen Stein	2A08.1-012	6370
23506 7590 08/07/2007 GARDNER GROFF GREENWALD & VILLANUEVA. PC 2018 POWERS FERRY ROAD SUITE 800 ATLANTA, GA 30339			EXAMINER NEWTON, JARED W	
			ART UNIT 3692	PAPER NUMBER
			MAIL DATE 08/07/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/829,552

Applicant(s)

STEIN, ALLEN

Examiner

Jared W. Newton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 4-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This non-final rejection is in reply to the remarks filed May 21, 2007, by which claims 1, 4, 9, 11, and 16 were amended, claim 3 was canceled, and claim 21 was added. Claims 1, 2, and 4-21 are pending.

At the outset, the Examiner would like to apologize for the ongoing prosecution of this application; however, after consultation with a senior Examiner and further searching in view of the Amendments filed May 21, 2007, the allowability noted in the previous Office Action is hereby withdrawn.

### ***Claim Objections***

Claim 4 is objected to because of the following informalities: It depends on canceled claim 3. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6, 8, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. Des. 173,363 to Louis (hereafter Louis).

In regard to claims 1 and 21, Louis shows a rack comprising a fixed body panel (shown as panel "5"); a plurality of display panels (panels "6"-"10") detachably mounted

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to said rack, at least one of said panels being a hinged panel pivotally movable (see FIGS. 1 and 2) between a first position overlying a portion of another of said plurality of panels, and a second position not overlying the other panel, each of said plurality of panels comprising a free edge distal said rack, wherein each of said plurality of display panels (panels "6"- "10") is wider than the panel overlying it, wherein width is measured from the upper end to the lower end of said panels as shown in Figure 1, wherein the free edge of each of the plurality of panels extends beyond the free edges of any overlying panels when the panels are in the first position; and each of said plurality of panels having a sample of some material thereon (indicia shown), each said sample extending to the free edge of the panel on which it is mounted, and further extending beyond the free edge of the adjacent overlying panel (see FIG. 2).

In regard to claims 6 and 8, said sample of some material is capable of covering some portion of a floor or a wall.

Claims 11, 14, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Simmons.

In regard to claim 11, Simmons shows a rack having a base (portion of rack that contacts the ground), a body panel (central rear panel from which four panels extend), and a storyboard extending laterally from said body panel (unitary rearmost panels extending from the left and right sides of the body panel) (see FIG. 1); and

a first array of display panels (two panels left of center) mounted to said rack and overlying a portion of the storyboard such that said storyboard is only partially visible

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behind the array to an observer positioned in front of the display device (for instance, to an observer viewing the rack straight-on in Figure 1), wherein each of said two panels is wider than an adjacent overlying one of the plurality of panels, where width is measured from top to bottom as seen from Figure 1.

In regard to claims 14 and 15, Simmons further shows a first storyboard extending from the left hand side of the rack (when viewed straight-on in Figure 1), and a second storyboard extending from the right hand side of the rack, the left and right storyboards respectively only partially visible behind a left and right array of panels (see FIG. 1).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-6, 8, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons as applied to claims 11, 14, and 15, in view of US Patent No. 3,391,796 to Cross.

In regard to claim 1, Simmons discloses a rack comprising a fixed body panel (center panel), a plurality of display panels mounted to said rack (see FIG. 1), each of said two display panels as wider, longer, or both wider and longer than an adjacent overlying one of the plurality of display panels, wherein the free edge of each of the

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plurality of display panels extends beyond the free edges of any overlying panels when the panels are in the first position; and each of said plurality of display panels having a sample of some material (darker, shaded, parallelepiped portions) mounted thereon, each said material sample extending to beyond the free edge of the adjacent overlying panel (as shown in Figure 1).

In regard to claim 2, Simmons discloses each of the panels mounted to the rack in a position horizontally offset from an adjacent one of said panels (see FIG. 2B).

In regard to claim 4, Simmons further discloses the size of the material samples displayed on the panels as increasing as the size of the panels themselves increase (see FIG. 1).

In regard to claim 5, Simmons shows material samples mounted to different panels (see FIG. 1). The Examiner takes Official Notice that larger portions of a given sample of material cost more than smaller portions thereof. It is well known that most material is generally sold by geometric area, (i.e. dollars per square-foot). It follows then that the more of a material constituting a sample, the more the cost, and vice versa. Thus it would have been obvious at the time of the invention that the higher the price is of a material sample shown by Simmons, the larger that sample will be.

In regard to claims 6 and 8, said sample of some material is capable of covering some portion of a floor or a wall.

In regard to claims 12 and 13, Simmons discloses the limitations of claim 11, and further discloses each of said panels comprising the material sample mounted thereto, the material sample extending substantially to the free edge of the panel (see FIG. 1).

Simmons does not explicitly show each of the display panels hingedly mounted to the rack.

Cross discloses a display board comprising multiple hingedly attached panels (each panel horizontally offset from and adjacent panel) mounted thereto and pivotal between a first position supported against the outermost panels and a second position wherein substantially the entire outermost panels are visible (see FIG. 1).

The Simmons and Cross references are analogous art because they are from the same field of endeavor—arrayed display panels. It is unclear whether the panels of Simmons are hingedly attached, in view of the fact that it is a design patent, and not accompanied by a written disclosure. If the panels are not hingedly attached, it would have been obvious to one of ordinary skill in the art at the time of the invention to do so, for motivation disclosed by Cross. Cross recites, "Because of their pivotal mounting, a plurality of panel surfaces can partially be used at one time or the panels may be selectively thumbed through like pages in a book." (See col. 1, lines 32-35). Such a pivotal mounting of the panels shown by Simmons would be advantageous for the same reason. It follows therefore that the pivotal mounting taught by Cross, when applied to Simmons, would enable the panels to move between a first position supported against the storyboard, and a second position wherein substantially the entire storyboard is visible.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons in view of Cross, as applied to claim 16 above, and further in view of US Patent No. 6,000,561 to Schumacher.

Simmons in view of Cross disclose the limitations of claims 1 and 6 as set forth above, but do not explicitly disclose said material samples comprising carpet. Schumacher discloses a display device comprising pivoting panels, wherein said panels display carpet (see col. 3, line 60).

The Simmons and Schumacher references are analogous art because they are from the same field of endeavor—display devices. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the display device disclosed by Simmons to display carpet as disclosed by Schumacher. The device of Simmons is intended to display jewelry chain, but has features advantageous for supporting a variety of products, including carpet. Displaying carpet as disclosed by Schumacher on the device as disclosed by Simmons would allow a retailer to display multiple different pieces of carpet (for example, carpet of different colors) in one general area.

Claims 16, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons in view of Cross as applied to claims 1, 2, 4-8, 12 and 13 above, and further in view of US Patent No. 5,368,486 to Kurzman.

In regard to claim 16, when the rack of Simmons is viewed straight-on in Figure 1, the two panels left of center are the first array, the two panels right of center are the second array, the rearmost left and right panels (unitary with the body portion) are the



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storyboard portions, the innermost panels are the overlying panels, and the panel between the innermost panel and the storyboard portion for each of the first and second sides of the rack is the underlying panel. Under this interpretation, the underlying panels as shown have material samples (shaded regions) mounted thereon, wherein jewelry chain is mounted on said material samples, the edges of said samples extending laterally beyond the outermost edges of the overlying panels as shown; and, the storyboard portions of the rack are partially (i.e. not fully) visible behind each of the first and second arrays of display panels (see FIG. 1).

In regard to claim 19, Simmons further discloses each of said panels as horizontally offset from an adjacent panel (see FIG. 2).

In regard to claim 20, Simmons shows different sized material samples mounted to different panels (see FIG. 1). The Examiner takes Official Notice that larger portions of a given sample of material cost more than smaller portions thereof. Material is generally sold by geometric area, (i.e. dollars per square-foot). This is well established and common in the art of materials including carpet, wood, wallpaper, fabric, tile, etc. It follows then that the more of a material constituting a sample, the more the cost, and vice versa. Thus, the higher the price is of a material sample (shaded parallelepiped region) shown by Simmons, the larger that sample will be.

Simmons does not disclose said storyboard displaying information directed to potential purchasers of the material displayed on the device.

Kurzman discloses a furniture merchandising and display system, wherein an informational display and selection charts on which unique code indicia, particularly color coding, is assigned to each item displayed (see abstract).

The Simmons and Kurzman references are analogous art because they are from the same field of endeavor—display devices. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide informational indicia as disclosed by Kurzman to the display as disclosed by Simmons. The motivation would have been to provide customers with a convenient means for identifying and learning about products that they may purchase.

Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons in view of Cross in view of Kurzman, as applied to claim 16 above, and further in view of US Patent No. 556,483 to Wayne.

Simmons in view of Cross in view of Kurzman discloses all of the limitations of claim 16, but neither reference explicitly discloses underlying display panels of each of the first and second arrays as progressively wider and taller than the overlying panels.

Wayne discloses a display device comprising multiple material samples mounted to a rack, wherein underlying samples are progressively taller and wider than overlying samples (see FIG. 1). Wayne discloses motivation for such a display—so that goods “may be examined as to size and quality and compared without causing any trouble or loss of time...” (see lines 69-75).

The Simmons, Cross, Kurzman and Wayne references are analogous art because they are from the same field of endeavor—display fixtures. Under the interpretation of Simmons set forth in the claim 16 rejection above, it is unclear whether the underlying panels are progressively wider and taller than the overlying panels, in view of the fact that it is a design patent, and not accompanied by a written disclosure. If the underlying panels are not progressively wider and taller than the overlying panels, it would have been obvious to one of ordinary skill in the art at the time of the invention to make them so as shown by Wayne, to allow for more efficient viewing and examination of the samples, or items affixed thereto—as set forth by Wayne.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons in view of Schumacher.

Simmons discloses the display as set forth above, including a rack comprising a fixed body panel (center panel), a plurality of display panels (two panels left of center) mounted to said rack (see FIG. 1), wherein the free edge of each of the plurality of display panels extends beyond the free edges of any overlying panel when the panels are in a first position as shown in Figure 1; and each of said plurality of display panels having a sample of some material (darker, shaded, parallelepiped portions) mounted thereon, each said material sample extending to beyond the free edge of the adjacent overlying panel (as shown in Figure 1), wherein each of said two panels is wider than an adjacent overlying one of the plurality of panels, where width is measured from top to bottom as seen from Figure 1. Simmons further discloses a storyboard (rear panels

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extending from and angled relative to the fixed body panel) extending at least partially beyond peripheral edges of the plurality of display panels (see FIG. 1).

Simmons does not disclose:

- (a) Said panels being hinged so as be pivotally movable between the first position set forth above, and a second position not overlying a panel;
- (b) Said storyboard displaying information directed to potential purchasers of material displayed on the device;
- (c) Said samples extending to a free edge of said panels.

With respect to (a) and (c), Schumacher discloses a display device comprising pivoting panels, wherein said panels display carpet samples (see col. 3, line 60) that extend to a free edge of said panels (see FIG. 3).

With respect to (b), Schumacher further discloses the display of product information and photographs near said panels (see col. 7, line 63 – col. 8, line 4).

The Simmons and Schumacher references are analogous art because they are from the same field of endeavor—display devices. It would have been obvious to one of ordinary skill in the art at the time of the invention to make the panels of Simmons hinged as disclosed by Schumacher, thereby allowing said panels to rotate between the first position (where the first panel left of center overlies the second panel left of center) to a second position where said panels do not overlap. The motivation for making panels hinged would be that as disclosed by Schumacher—to allow items mounted to said panels to be seen in full (see Schumacher, col. 1, lines 26-34). It would have been further obvious to utilize the display as disclosed Simmons to mount carpet samples as

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disclosed by Schumacher, so that said samples extend to a free edge of said panels as further disclosed by Schumacher. Simmons discloses a successful display device for jewelry chain. It would have been obvious to mount carpet to said display device, as it is well known in the art to use one display device to display several different products. It would have been further obvious to mount the carpet samples as disclosed by Schumacher on the panels as disclosed by Simmons so that said samples extend to the free edges of said panels, so as to utilize all available display space. It would have been further obvious to use the storyboard as disclosed by Simmons to display product information as disclosed by Schumacher. The motivation would have been to inform potential customers at the point of display about products they may purchase.

For reasons set forth immediately above, claims 1, 2, 4, 6-8 and 21 are deemed rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons in view of Schumacher.

### ***Response to Arguments***

With respect to the Applicant's Remarks regarding the amendments to claim 1: Although the Examiner indicated allowable subject matter (claims 3 and 4 as set forth by the Applicant on March 21, 2006) in the Office Action mailed April 19, 2007, and the Applicant has included said allowable subject matter into independent claim 1, the additional amendments to claim 1 render it not allowable as set forth in the rejections above.

With respect to the Applicant's Remarks regarding the amendments to claims 11 and 16: The Applicant's assertion that "Claim 11 is rewritten in independent form to include all of the elements of allowable Claim 3, and Claim 16 is rewritten in independent form to include all of the elements of allowable Claim 9 ... Claims 11 and 16 are believed to be in condition for allowance" is incorrect. Claim 3 was indicated as allowable only if rewritten to include all of the limitations of claim 1, on which it depended (see Non-Final Rejection, page 8, April 19, 2007). Likewise, claim 9 was indicated as allowable only if rewritten to include all of the limitation of claim 1, on which it depended. The Examiner did not indicate that including the subject matter of claim 3 or claim 9 into a claim other than claim 1 would render that claim allowable. Thus, claims 11 and 16 stand rejected as set forth above.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jared W. Newton whose telephone number is (571) 272-2952. The examiner can normally be reached on M-F 8-5.

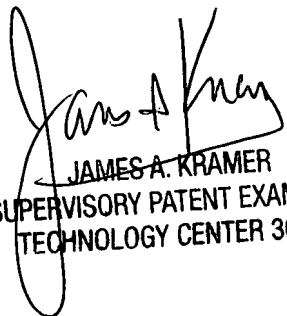
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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JWN  
July 31, 2007



8-6-07  
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